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No. 84-1171

In the Supreme Court of the United States

OCTOBER TERM, 1984

JOHN W. JENRETTE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the government's investigation of petitioner, a Member of Congress, was so outrageous that the Constitution requires that his conviction be overturned.

TABLE OF CONTENTS

Page

Opinions below 1

Jurisdiction 1

Statement 1

Argument 4

Conclusion 8

TABLE OF AUTHORITY

Cases:

Lederer v. *United States*, cert. denied, 461 U.S. 961 7

Myers v. *United States*, cert. denied, 461 U.S. 961 7

Thompson v. *United States*, cert. denied, 461 U.S. 961 7

United States v. *Brewster*, 408 U.S. 501 8

United States v. *Jannotti*, 729 F.2d 213, cert. denied, No. 83-1891 (Oct. 9, 1984) 5

United States v. *Myers*, 692 F.2d 823, cert. denied, 461 U.S. 961 5

United States v. *Silvestri*, 719 F.2d 577 5

United States v. *Weisz*, 718 F.2d 413, cert. denied, No. 83-1036 (Feb. 21, 1984) 5

United States v. *Williams*, 705 F.2d 603, cert. denied, No. 83-256 (Dec. 5, 1983) 5

Page

Constitution and statutes:

U.S. Const. :

Art. I, § 6, Cl. 1 (Speech or Double Clause) 7

Amend. V (Due Process Clause) 4

18 U.S.C. 371 2

18 U.S.C. 201(c) 2

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-18a) is reported at 744 F.2d 817. The opinion of the district court (Pet. App. 19a-65a) is reported at 594 F. Supp. 769.

JURISDICTION

The judgment of the court of appeals (Pet. App. 69a) was entered on September 18, 1984. A petition for rehearing was denied on October 22, 1984 (Pet. App. 70a-71a). On December 7, 1984, the Chief Justice extended the time to file a petition for a writ of certiorari to January 20, 1985, and the petition was filed on January 19, 1985. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the District of Columbia, petitioner was convicted on one count of conspiracy to defraud the United States and to

commit bribery, in violation of 18 U.S.C. 371, and on two counts of bribery, in violation of 18 U.S.C. 201(c). He was sentenced to concurrent two-year terms of imprisonment on the conspiracy count and the first bribery count; on the second bribery count, imposition of sentence was suspended and petitioner was placed on probation for five years. Petitioner was also fined $10,000 on each count. Pet. App. 68a. The court of appeals affirmed (*id.* at 1a-18a).

1. Petitioner is one of a number of public officials and private citizens who were convicted as a result of the FBI's Abscam investigation. In this investigation, the FBI established a fictitious company named Abdul Enterprises, the owners of which were supposedly wealthy Arab sheiks. FBI Agent Amoroso, together with informant Melvin Weinberg, posed as the sheiks' representatives. In a series of recorded conversations and videotaped meetings, they offered bribes to public officials who would agree to help the sheiks immigrate into the United States at some point in the future when the sheiks might need such assistance. Pet. App. 2a.

The Abscam operatives were introduced to petitioner by John Stowe, a friend of petitioner who sought financing from the sheiks for various business deals. Stowe first mentioned petitioner to Weinberg in October 1978, when Stowe and Weinberg were discussing a scheme for bringing bank documents into the United States; Stowe said that he believed certain difficulties could be overcome because "my contact is a Congressman." Stowe added: "He's as big a crook as I am * * *." Pet. App. 22a-23a; see *id.* at 3a & n.2. Weinberg and Stowe continued their discussions, and in November 1979 Weinberg told Stowe that the sheiks were interested in discussing with petitioner the possibility of a private immigration bill. Weinberg asked Stowe to determine whether petitioner would introduce such a bill for $100,000. In early December 1979, Stowe met with and

called Weinberg and Amoroso to confirm his understanding that $100,000 would be paid to petitioner and to arrange a meeting with petitioner. Pet. App. 3a & n.3.

Petitioner first met with the Abscam operatives on December 4, 1979. The meeting was videotaped. Amoroso explained that his clients might need help entering the United States; petitioner responded by stating that he would introduce a private immigration bill or arrange to have one introduced. Amoroso said to petitioner: "We're talking about fifty thousand dollars now and fifty thousand dollars when this thing is introduced." Petitioner then discussed the possibility of having a private immigration bill introduced simultaneously in the Senate. He also discussed with the Abscam operatives how a payment might be made and said that he might want his law partner to attend a meeting with the sheik's representatives "just to further cover my ass." Pet. App. 3a, 4a, 28a. The district court, in denying petitioner's post-trial motion for a judgment of acquittal, described the events at this meeting as follows (*id.* at 28a-29a; citations omitted):

> It is clear that during the December 4 meeting [petitioner] understood that he was being offered a bribe. He notes at one point that, "I dunno a thing. I don't know that I've taken a bribe and I dunno know that that you've offered me a bribe." He immediately stated however that he would feel "more at comfort if I could come back tomorrow and say OK." * * * He also stated later on, "ya, and I'd like to have your money. Don't get me wrong. I'd like to do it, I'd like to help you." As if to set aside any doubt as to his state of mind, [petitioner] advised [Amoroso] "are we clear, I mean I, well listen, don't get me wrong, I don't I — I got larceny in my blood. I'd take it [the money] in a goddamn minute." [Petitioner] did not accept the bribe at that

> point but left the [meeting] to think it over, the impression being that he wanted to make sure he could produce on his promise.

Petitioner telephoned Amoroso on the following day, December 5, to say that he would go forward with the transaction. The next day, petitioner again called Amoroso, saying that he wanted Stowe to pick up the money; petitioner explained that that procedure would "keep[] me just a little bit ah one step away from a section in the code about, uh, public officials." Pet. App. 32a; footnote and citation omitted. After Stowe collected the money, petitioner confirmed with Amoroso in a telphone conversation that he had received it (*id.* at 4a).

Petitioner and Stowe met again with the Abscam operatives on January 7, 1980; at that time petitioner claimed that he might be able to interest Senator Thurmond of South Carolina in introducing a private immigration bill in exchange for cash. Petitioner and Stowe continued to have contacts with Amoroso and Weinberg regarding the proposed bribery of Senator Thurmond until they were arrested. Pet. App. 4a-5a.

2. After trial, petitioner unsuccessfully moved for a judgment of acquittal on the grounds that the prosecution's tactics were so outrageous as to violate the Due Process Clause; that he was entrapped as a matter of law; and that the government failed to comply with its obligations to disclose exculpatory evidence in its possession (Pet. App. 19a-65a). On appeal, petitioner renewed these contentions and also asserted that the district court erred in failing to instruct the jury on the defense of duress. The court of appeals rejected these contentions and affirmed petitioner's convictions. *Id.* at 1a-18a.

ARGUMENT

Petitioner's sole contention is that the government's conduct of the undercover operation that led to his conviction

was so outrageous that the Due Process Clause and separation of powers principles require that his conviction be set aside. A similar argument has been advanced by other defendants whose convictions resulted from the Abscam investigation; it has been uniformly rejected by the courts of appeals, and this Court has repeatedly denied review. See, *e.g.*, *United States* v. *Jannotti*, 729 F.2d 213 (3d Cir.), cert. denied, No. 83-1891 (Oct. 9, 1984); *United States* v. *Silvestri*, 719 F.2d 577, 581 (2d Cir. 1983); *United States* v. *Weisz*, 718 F.2d 413, 440-441 (D.C. Cir. 1983), cert. denied, No. 83-1036 (Feb. 21, 1984); *United States* v. *Williams*, 705 F.2d 603, 619-622 (2d Cir.), cert. denied, No. 83-256 (Dec. 5, 1983); *United States* v. *Myers*, 692 F.2d 823, 836-843 (2d Cir. 1982), cert. denied, 461 U.S. 961 (1983). There is no more reason for the Court to grant review on this occasion.

The record of this case shows that, contrary to petitioner's assertion (see, *e.g.*, Pet. 2, 12), government agents did not "target[]" him or pursue him with temptations designed to "test [his] * * * moral fiber"; on the contrary, at each step of the investigation they took actions that were reasonable and appropriate in light of the information about petitioner that had previously come to their attention. Thus, the agents undertook an investigation of petitioner because Stowe, in the course of discussing business arrangements of questionable legality, identified petitioner as his "contact" and a "crook." The agents then did not themselves approach petitioner but offered a bribe through Stowe. At that point, petitioner agreed to meet with the agents and unmistakably revealed his willingness to be bribed. Petitioner then contacted the Abscam operatives on the following day, arranging to have Stowe collect the money on the day after. Petitioner is unable to identify any point in this chain of events at which the Abscam operatives subjected him to unfair or unreasonable pressures or temptations.

Petitioner devotes much attention (*e.g.*, Pet. 6-8) to Weinberg's dealings with Stowe; petitioner asserts that Weinberg's object throughout his relationship to Stowe was to see if petitioner could be corrupted. But even if this characterization of Weinberg's objectives is correct, petitioner does not explain why *he* is entitled to complain. Petitioner acknowledges (Pet. 7-8) that the Abscam operatives did not in any way offer a bribe to him until November 15, 1979, and that at that point they did not contact petitioner directly but made the offer to Stowe, who conveyed it to petitioner. Stowe promptly arranged a meeting among petitioner, Weinberg, and Amoroso, and within three weeks petitioner had accepted a cash bribe. This hardly constituted a "relentless pursuit" of petitioner (Pet. 7) or an exploitation of his weaknesses.

Petitioner also emphasizes three other factors that, he suggests, combined to make the government's investigation of him fundamentally unfair: the "overwhelming" (Pet. 12, 13) size of the bribes he was offered; his alcoholism (see Pet. 5-6, 13); and the Abscam operatives' alleged effort to make Amoroso appear to be a threatening gangster (see Pet. 14). But the district court found — and its conclusion is clearly correct — that the amount of money offered to petitioner was by no means excessive. "Certainly $50,000 or $100,000 or double that amount, would not be so large as to excuse a member of Congress who has accepted a bribe" (Pet. App. 42a; see *id.* at 11a). While petitioner intimates (Pet. 8-9) that he was drunk during the December 4 meeting, drunkeness is a defense to a criminal charge only if it renders the defendant incapable of forming the specific intent, if any, that is an element of the offense. Petitioner does not even suggest that he lacked the intent necessary to commit the offense of bribery at the December 4 meeting; and even if he did lack the necessary intent at that time, he took two more days to decide whether to accept the bribe. He then continued his dealings with the Abscam operatives until he was arrested. As far as the undercover agents' alleged coercive tactics are

concerned, both courts below agreed that petitioner was not entitled to raise a defense of duress (see Pet. App. 5a-7a), and petitioner does not challenge that determination. Moreover, petitioner identifies nothing in the record that suggests that he was coerced into accepting the bribe. Petitioner did, at one point, suggest that he feared possible retaliation if he accepted the bribe and did not carry out his part of the bargain (see Pet. 10; Pet. App. 30a-31a); but that scarcely excuses petitioner's decision to accept the bribe.

Finally, petitioner objects (*e.g.*, Pet. 7-8, 12, 17) that the government did not have reasonable suspicion or probable cause to suspect him of a crime before it initiated its investigation of him; petitioner appears to contend that it violates separation of powers principles for the government to investigate a member of Congress in these circumstances. This Court has rejected this contention when it was made by other Abscam defendants,[1] and like them, petitioner fails to identify anything in the Constitution or in any of this Court's opinions that suggests any such requirement. Petitioner does not suggest, and cannot suggest, that he was investigated for any improper or impermissible reason, such as a desire to retaliate against him for his political views. Nor does petitioner suggest that his prosecution violated the Speech or Debate Clause, the principal protection Members of Congress enjoy against unwarranted prosecution. Indeed, petitioner does not identify any aspect of the Abscam operation that deviated from the course that would have been pursued by individuals who were in fact hoping to bribe a Member of Congress: they heard from an associate of the Member that the Member was a "crook"; they told the associate that they would be willing to bribe

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[1]See 82-1183 Pet. 9-14; 82-1199 Pet. 20-44; 82-1255 Pet. 24-27, 49-56. (These were the certiorari petitions filed in, respectively, *Lederer* v. *United States*, *Thompson* v. *United States*, and *Myers* v. *United States*. Certiorari was denied in each of these cases on May 31, 1983. (461 U.S. 961.)

the Member; and when the Member attended a meeting and showed full awareness that an attempt was being made to bribe him, and willingness to accept the bribe, they did not cease their investigation. In these circumstances, it was petitioner's willingness to accept a bribe — not the undercover agents' actions — that threatened the integrity of the legislative branch. See *United States* v. *Brewster*, 408 U.S. 501, 524-525 (1972).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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